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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN - 4 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

)
)
) Policies and Rules Pertaining to Local
) Exchange Carrier "Freezes" of Consumer
) Choices of Primary Local Exchange or
) Interexchange Carriers)

9085
RM-9058

File No. CCB/CPD 97-19

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, files these comments in support of the Petition for Rulemaking filed by MCI Telecommunications Corporation ("MCI"), asking the Commission to prevent incumbent local exchange carriers' ("ILECs") from raising anticompetitive barriers to a customer's ability to switch telecommunications service providers.^{1/} MCI requests FCC intervention to prevent burgeoning anticompetitive practices by ILECs involving the imposition of unreasonably cumbersome restrictions on consumer choice of primary interexchange carriers ("PIC") -- so-called PIC freezes. MCI characterizes a PIC freeze as a product or service offered by an ILEC to its customers that prevents a change or

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^{1/} MCI's main concern about ILEC practices revolves around marketing restrictions on intraLATA and interLATA toll presubscription services. While unreasonable ILEC marketing restrictions in these markets should prompt FCC interest and action, Cox's emphasis is on the impact that unreasonable ILEC marketing restrictions may have on the development of local telecommunications competition.

modification in the customer's choice of interexchange carrier without direct instructions (either written or verbal) to the ILEC from the customer.^{2/}

Cox's telecommunications carrier affiliates are in the process of deploying competitive local telecommunications alternatives to the ILECs in a number of Cox's cable television markets. Inasmuch as Cox has a local telecommunications service orientation, Cox has not been affected by the IXC slamming wars. Nevertheless, Cox appreciates the need for robust carrier change verification procedures that prevent customers from being slammed in interLATA, intraLATA and local markets.^{3/} Cox does not believe, however, that the FCC should permit or endorse anticompetitive ILEC customer retention programs masquerading as anti-slamming initiatives.

Unlike bona fide customer retention programs, the ILEC freeze programs described by MCI appear to be tactical ploys by ILECs to lock in existing customers in the face of emerging competition. For example, MCI describes an Ameritech PIC freeze campaign found to be deceptive by the Michigan Public Service Commission. Ameritech had urged customers to sign up for "PIC Protection" without explaining that the freeze would create an additional hurdle or delay when the customer later sought to change her provider of interLATA, intraLATA or local service. The PSC found the practice particularly egregious since it was carried out "just as

^{2/} MCI Petition at 1.

^{3/} The FCC has addressed this issue in the long distance market by adopting rules in Part 64, Subpart K that govern basic required procedures for changing long distance carriers and by an aggressive program of assessing forfeitures on interexchange carriers found to be slamming.

alternatives were becoming available."^{4/} The Illinois Commerce Commission ("ICC") has also found Ameritech's freeze solicitations to be unfair and discriminatory to other carriers and misleading in light of Ameritech's failure to inform unwitting customers of a freeze's impact on the ability of other carriers to market their services.^{5/}

Indeed, in the context of existing FCC rules, Cox agrees with MCI that ILEC "services" purporting to protect customers against unauthorized conversion to a new carrier that do not fully inform a customer of the consequences of a freeze selection can only be seen as anticompetitive defenses to lock up customers against anticipated intraLATA and local competition.^{6/} As such, these ILEC programs go way beyond bona fide, informed customer protection against slamming.

These ILEC programs also misuse the ILEC monopoly bottleneck to disadvantage would-be competitors. Under the current monopoly environment, CLECs must communicate with ILECs and receive ILEC cooperation to effect a switchover in a customer's local telecommunications service. Because of this, Cox is highly concerned about expansion of preemptive and misleading ILEC solicitation of customers for service provider freezes. Such ILEC behavior can only be seen as a defensive strategy, undertaken in anticipation of CLECs erosion of existing monopoly markets.

^{4/} Complaint of Sprint Comm. Co., L.P. against Ameritech Michigan, 171 PUR4th 429, 1996 Mich. PSC LEXIS 259, Case No. U-11038, (Mich. PSC Aug. 1, 1996).

^{5/} MCI Telecommunications Corp., AT&T Comm. of Ill., Inc. and LCI Int'l Telecom Corp. v. Ameritech Illinois, Order, Case Nos. 96-0075, 96-0084 (consol.), 1996 Ill. PUC LEXIS 205 (Ill. Commerce Com. April 3, 1996). MCI cites similar PIC freeze solicitation strategies by Southern New England Telephone ("SNET").

^{6/} MCI Petition at 4.

There also are a number of competitive problems presented by ILEC freeze programs. First, in light of the ILECs' virtual local monopoly and as the Michigan PSC already observed, ILECs have an enormous incentive to initiate freeze programs that act as an additional barrier to entry just as local service competition begins. The freeze programs MCI describes in the intraLATA market will inevitably be extended to local market services without customers being fully informed about how their selection of a freeze could affect the ability of CLECs to market competitive services to ILEC customers. As such, it would appear to be an unreasonable practice in violation of section 201(b) of the Communications Act.^{7/}

Second, as MCI noted, only the ILEC knows which of its customers has opted for a freeze, creating an enormous marketing disadvantage for CLECs. Indeed, MCI's experience with PIC freezes suggests that new entrant carriers going to the effort of winning ILEC customers will be operating in the dark as to whether such customers have authorized a freeze, even in the aftermath of those customers having made an affirmative, verified decision to switch carriers. Only after the ILEC rejects a change request based on a freeze authorization could a CLEC commence the expensive, cumbersome and possibly abortive process of explaining the problem to its customer and asking the customer to remove the freeze. This raises the specter of the ILEC

^{7/} In its recent SBC Tariff Investigation Order--*Southwestern Bell Tel. Co.*, Order Designating Issues for Investigation, DA 97-1087, released May 23, 1997--the Common Carrier Bureau reiterated the FCC's 1992 decision in its Expanded Interconnection Order that it is unjust and unreasonable in violation of section 201(b) of the Communications Act for an incumbent ILEC to engage in practices that will deprive customers of the benefits of efficient competition in the market for interstate access services. *Expanded Interconnection Order*, 7 FCC Rcd 7369, 7465 (1992). Cox believes that the practices highlighted by MCI constitute just such a violation of section 201(b), as they deprive customers of the benefits of competition by unreasonably tying customers to the ILEC.

recapturing the new CLEC customer when the customer decides that the process of overriding a prior freeze authorization is more trouble than it is worth.

On the other side of the coin, a broad ILEC-solicited PIC freeze could create a substantial information advantage for the ILEC. Because the ILEC is the only carrier aware of a customer's PIC freeze authorization, it is the only carrier in a position to efficiently and effectively cross-sell its customer services in additional markets. As MCI observes, an ILEC that knows it is marketing to a customer that has selected a freeze can gather the appropriate combination of subsidiaries together in a joint telemarketing effort to convince the customer to revoke the PIC freeze.^{8/} No other carrier is in such a position to control the freeze mechanism.

Most importantly, the freeze programs described by MCI, if applied to local telecommunications markets, would constitute an unreasonable additional barrier to market entry.^{9/} Facilities-based CLECs such as Cox already face substantial odds in going head-to-head with ILECs in their core market. They should not also be handicapped by freeze programs that artificially create additional layers of bureaucracy and complication to selling service to the customers of the entrenched ILEC. The ILEC freeze programs are anticompetitive, not in the public interest and violative of Section 201(b) of the Act.

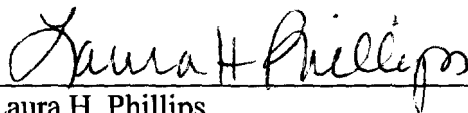
^{8/} MCI Petition at 7-8.

^{9/} While MCI has framed its proposed rule as applying to all carriers, in the local telecommunications market only ILECs have the incentive to lock up existing local service customers with freeze programs. For this reason, Cox does not believe there is a need for a rule of general applicability, but rather one directed to the incentives of the ILEC to frustrate local competition.

Cox has no problem with the reasonable application to local services of bona fide customer protection programs, consistent with existing FCC long distance slamming rules. However, the unreasonable ILEC practices MCI highlights will have a pernicious effect on competition if they are permitted to expand to the local telecommunications market. In view of the serious detriment to competition and to consumers caused by ILEC freeze programs, Cox agrees that action by the Commission is necessary to ensure that an environment develops in which customer choice of carriers is easily accommodated by ILECs.

Respectfully submitted,

COX COMMUNICATIONS, INC.

A handwritten signature in cursive script, reading "Laura H. Phillips", written over a horizontal line.

Laura H. Phillips
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June 4, 1997

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, of the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 4th day of June, 1997, I caused copies of the foregoing "Comments of Cox Communications, Inc." to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

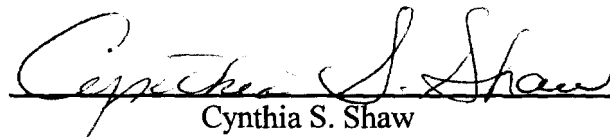
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